BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Opinions of the Court below, and of the Respondent Board.

Opinions in this case have been reported as follows:

Jones & Laughlin Steel Corporation v. N. L. R. B., 146 Fed. (2d) 833 (5 C.C.A., 1945)

In re Jones & Laughlin Steel Corporation, etc., 54 N.L.R.B. 679 (January 19, 1944)

In re Jones & Laughlin Steel Corporation, etc., 51 N.L.R.B. 1204 (August 11, 1943)

In re Jones & Laughlin Steel Corporation, etc., 47 N.L.R.B. 1272 (March 2, 1943)

In re Jones & Laughlin Steel Corporation, etc., 38 N.L.R.B. 352 (January 16, 1942)

In re Jones & Laughlin Steel Corporation, etc., 37 N.L.R.B. 366 (December 6, 1941).

Grounds on which the Jurisdiction of this Court Is Invoked.

As is stated in the petition for certiorari, the Court has jurisdiction to issue the writ in this case, by virtue of the provisions of Section 10 (e) of the National Labor Relations Act (29 U.S.C. 160 (e)), and those of Section 240 of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347).

Petitioner's Petition for Rehearing was denied by the Court below on March 12, 1945 (R. 168); and the Final Decree of that Court was entered March 16, 1945 (R. 168).

Statement of the Case.

To avoid unnecessary repetition, petitioner will rely upon the Statement of the Matter Involved which appears at pages 2 to 7 *supra,* in its petition for certiorari.

Specification of Errors Intended to Be Urged.

1. The Circuit Court erred in holding that the inclusion of licensed shipmasters in the "appropriate unit" established by the Board in this case was justified by the traditions of the maritime calling.

2. The Circuit Court erred in holding that the inclusion of licensed shipmasters in the "appropriate unit" established by the Board in this case was justified by long, satisfactory experience in the maritime calling.

3. The Circuit Court erred in holding that the respondent Board may lawfully require the inclusion of licensed shipmasters in an "appropriate unit," dominated by their subordinate officers.

4. The Circuit Court erred in holding immaterial the evidence which had been offered by petitioner (R. 101-102), that the union certified by the respondent Board as exclusive representative of petitioner's licensed masters, mates and pilots was, in fact, subject to the domination and control of the other unions which had been certified and recognized as the representatives of all of the marine engineers and seamen employed on petitioner's steam vessels.

5. The Circuit Court erred in holding that, under the National Labor Relations Act, the respondent Board

may lawfully require the owner of a fleet of steam vessels to recognize as exclusive representative, for the purposes of the National Labor Relations Act, of the licensed masters of such steam vessels, the same union which is exclusive representative of subordinate members of the crews of such vessels.

6. The Circuit Court erred in refusing to set aside the respondent Board's Order.

7. The Circuit Court erred in granting enforcement of the respondent Board's Order.

ARGUMENT.

I. This Court Should Decide the Much Disputed Question of the Nature and Limits of the Board's Authority to Include Executive and Managerial Employees in Schemes of Collective Bargaining.

1. *Statutory basis for the Board's Power: Section 9 of the National Labor Relations Act.*

Section 9 of the National Labor Relations Act fixes the status of a labor union chosen by a majority of the employees in an "appropriate unit" in these words:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment."

And the same section delegates to the Board the power and duty to determine what employees shall, and what employees shall not, be included in any particular "unit," in these words:

> "(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

These are the only provisions of the Act which purport to give the Board the power under examination here.

2. *The growing need for a proper definition of the Board's powers, under this Section of the Act.*

Only a little reflection is required to show that the power here conferred upon the Board is a large one; that the manner of its exercise may have the most profound effects to determine the way industry is managed, and the part to be taken by labor unions in its management, in the future; and that the essential question presented here is, therefore, one of great and general importance.

Under this section of the Act, the union certified as the choice of a majority of any particular "unit," established or approved by the Board, has the power to make an employment contract which will bind the entire unit. Once such a contract has been made by the union, every member of the "appropriate unit" is bound by it. Individual contracts—between employer and any individual employee or a minority group of employees—become illicit, except perhaps to the extent that their terms conform precisely to those of the union's bargain: *J. I. Case Co. v. N. L. R. B.*, 320 U. S. 332; 88 L. Ed. 489 (1944); *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678; 88 L. Ed. 749 (1944).

This means, among other things, that any employee who is included in an "appropriate unit" must treat with great respect the labor union chosen by a majority of the members of the unit, whether his natural sentiments and his other obligations incline him in that direction or otherwise. The union certified by the Board has the legal right to insist upon a written agreement: *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514; 85 L. Ed. 309

(1940), and may lawfully demand the inclusion in that agreement of a provision requiring the employer to discharge any employee who fails to maintain himself as a member of the union in good standing.[1] And, whether such a "union-shop" agreement is made or not, the individual member must avoid any violation of his brotherly duties to other members of the union, and often to labor unions and laborers in general. This is a requirement of every union Constitution.

To the productive worker in a steel mill or automobile factory, or to the ordinary unlicensed seaman employed on a steam vessel, the duty of allegiance to his labor union usually involves no embarrassment in the discharge of his duties to his employer; and, therefore, the inclusion or exclusion of any particular employee or class of employees from an "appropriate unit," by the Board's order, is a matter having no profound effect upon the problem of effective management, for so long as the case involves only productive workers. But the situation becomes very different when (as in this case) the claims of the union and the orders of the Board propose to amalgamate into a "unit," dominated by subordinate employees, any employee or class of employees charged with the executive and managerial duties of commanding, instructing and supervising the work of the subordinates, and of imposing discipline or discharge upon such of them as may fail to meet the standards of efficiency fixed by the employer.

Although the principle must operate in a variety of other similar cases, this case affords one of the best

[1]See Section 8 (3) of the Act (29 U.S.C. 158 (3)); *Warehousemen's Union v. N. L. R. B.*, 121 Fed. (2d) 84 App. D.C. (1941); Cert. den. 314 U. S. 674; 86 L. Ed. 539.

possible illustrations of the difficulties which would follow a misuse of the Board's power. The duty of a shipmaster to enforce obedience and efficiency among members of his crew is one fixed not simply by the orders and ideas of the shipowner who employs him, but also by a multitude of federal statutes. Thus, the failure of a master to enforce discipline may result not only in the loss of his ship, but also in the suspension of his license and in the imposition of civil and criminal penalties: see *New York and Cuba Mail S.S. Co. v. Continental Insurance Co.*, 117 Fed. (2d) 404 (2 C.C.A., 1941). If in his efforts to perform his duties with proper courage and determination, such a man must always remember that, by offending the numerous subordinates who dominate his labor union, he may lose his good standing with the union, and that the union, in the end, controls his employment, his position can never be anything but a false one.

Of course, the same considerations apply also, though usually in a lesser degree, to any executive or foreman in any enterprise in which the productive workers have been made subject to organization, by a union which desires to extend its jurisdiction to include supervisory employees also. Bearing this in mind, it seems well to explain why, it appears, the question presented here has not arisen in any past case in this Court. The explanation is that, for years after its organization in 1935, the respondent Board included in its "appropriate units" only those employees whose inclusion was agreed upon by the employer and the union concerned in any particular case; or, when no such agreement was possible, it included in the "appropriate unit" only production and maintenance workers, care-

fully excluding managerial employees, from foremen to corporate executives, and also such other employees as clerical and office workers, plant guards and police, factory nurses and matrons, and other classes similarly excluded, by tradition, from the class of persons commonly called "labor." Until recently, this interpretation of the law appears to have been satisfactory to the unions.

For so long as this remained the Board's policy, the question presented here could not arise. Recently, however, certain of the more influential labor unions, having exhausted the possibilities of organization among production and maintenance workers, have desired to extend their jurisdiction, and—for one reason or another—to bring within the scope of their agreements such formerly excluded classes as foremen, office employees, plant policemen, and—as in this case—the masters of steam vessels. With the development of this new tendency of the labor movement, it has become increasingly necessary that the Board be given some proper standard to guide its decisions of such cases.

3. *The Board has established no sound, legal standard of decision in such cases generally.*

To guide the Board in its duty to establish appropriate units, the statute contains nothing except the words of Section 9, which provide that the "unit" established by the Board shall be adapted "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act." The "policies of the Act" are, as this Court has said, to encourage "the practice and

procedure of collective bargaining," and to protect "the exercise by workers of full freedom of association and of negotiating the terms and conditions of their employment or other mutual aid or protection through their freely chosen representatives."[2]

Were these words of the Act to be considered without reference to any other consideration of law, the Board's course might be plain enough—it might then appear that, to encourage collective bargaining, every union should be given jurisdiction of every employee or class of employees it might seek to include within its sphere of influence. The language of the Act might permit this. It contains no words which would forbid the inclusion, in an "employer unit," of all the employees of an industrial corporation, including the president and the other executive officers.

That, of course, is not what the Act means, and that application of the Act is improbable.[3] But what does the Act mean? Or, to put the same question in more specific terms, by what principle is the Board bound to decide that the president of a corporation, or the licensed master of a steam vessel, shall or shall not be included in a "unit" of which a labor union demands jurisdiction?

This question (one not heretofore presented to this Court) has not found any consistent answer in the Board's own decisions; and it is evident that the Board has not yet adopted, and adhered to, anything which could be called an intelligible rule. A list of all the past

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[2] *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7, 10; 85 L. Ed. 6, 9 (1940).

[3] See *In re Maryland Drydock Co.*, 49 N.L.R.B. 733 (1943).

cases, in which the Board has faced the problem, would burden and expand this brief improperly. It is sufficient to mention, briefly, the three leading cases—all decided within the last three years.

In re Union Collieries Corp., 41 N.L.R.B. 961 (1942), the Board, one member dissenting, held that, contrary to a tradition of the industry, foremen in bituminous coal mines should be included in an "appropriate unit." This was a departure from the Board's earlier policy, described above; but it was followed in several cases decided shortly afterwards.

Then, *In re Maryland Drydock Company*, 43 N.L.R.B. 733 (May 11, 1943), the Board reconsidered the matter in all of its aspects, and held that in no case—except to the extent that long established traditions should require it—could any foreman or other supervisory employee be included in an "appropriate unit," or represented by a union which represented also his subordinate employees. One member dissented.

Finally, *In re Packard Motor Company*, 60 N.L.R.B. .... (March 26, 1945)[4], the Board again examined the question in detail, in a long opinion. It observed that the *Maryland Drydock* case was almost two years old, and in effect overruled it, holding that foremen should, after all, be included in appropriate units. Again one member dissented; the dissenter, Mr. Reilly, saying at the beginning of a carefully considered dissent:

> "In my opinion, the decision we are making today does irreparable damage to the delicate balance between the conflicting interests of management

[4]Reported unofficially in Vol. 16 *Labor Relations Reporter*, p. 168.

and worker which the National Labor Relations Act sought to bring about in American Industry."

At this moment of the Board's history, no question is of greater or more general importance then the question here under scrutiny. And yet, nobody who has read these three leading cases could guess reliably the outcome of the next case in which the question shall come before the Board.

4. *The same situation exists in cases involving licensed masters of steam vessels.*

These three cases, just mentioned, the leading authorities on the subject in the Board's own reports, show that the Board has found no reliable principle to guide it in such cases, considered as a general class. The same confusion exists amongst the cases in which the status of licensed masters of steam vessels has been the particular subject of the Board's decision.

Thus, the Board has *excluded* licensed masters—in order to preserve the efficient functions of management and labor—in these cases:

In re United States Lines, 28 N.L.R.B. 896 (1941)

In re Detroit and Cleveland Navigation Co., 29 N.L.R.B. 176 (1941)

In re United Dredging Co., 30 N.L.R.B. 739, 797 (1941).

On the other hand, the Board has *included* licensed masters in a few early cases—where the employer, presumably because of his peculiar relationships with the union concerned, either desired it, as *In re N. Y. and Cuba S.S. Co.,* 2 N.L.R.B. 595 (1937); or did not oppose

it, as *In re Standard Oil Co. of New Jersey,* 8 N.L.R.B. 936 (1938); and in a number of very recent decisions—of which the case at bar is one—in which the wishes of the union alone were consulted.

5. *The question is not settled by any tradition of the maritime calling, in so far as licensed shipmasters are concerned.*

In the Opinion of the Circuit Court (R. 111), it is stated as though it were a fact that there is, in the history of the maritime calling in this Country, a long record of satisfactory collective bargaining between shipowners and their crews, which has included licensed shipmasters in its scope. There is no evidence in the record and no finding of fact which justifies this conclusion. It was based by the Court upon a possibly inadvertent assertion made in the Board's brief opposing the Petition for Review. In that brief, the assertion was made as an expression of the Board's "expert knowledge," without any reference to anything in the record.

Of course, such matters of "expert knowledge" cannot be considered in such a case, unless they be of such notoriety as to command judicial notice; and, if the Board chose to rely upon such contention, the contention should have been advanced for scrutiny and contest in its evidence at the hearing: *Crowell v. Benson,* 285 U. S. 22, 48; 76 L. Ed. 598, 611 (1931).

But, what is more important here, the contention was not sound in fact. There is a well-established tradition of collective bargaining by "supervisory employees" in the maritime calling—as the Board observed in its *Maryland Drydock* case; but the "supervisory em-

ployees" with whom collective bargaining was known before 1935 were marine engineers, mates and pilots—never licensed shipmasters. This is shown beyond dispute in the testimony in two of the Board's earlier cases, of which the relevant portions are reproduced at R. 128-167 of this record. In short, if the Board's presently held view, that shipmasters should be included in "appropriate units" of their subordinates, should be sustained, the result will be a new departure in the labor relations of seamen and maritime officers; and, for that matter, a new experiment in a field in which experimentation may easily prove disastrous.

II. The Decision of the Court Below Is in Conflict with Decisions of Other Cases in the Third, Sixth and Seventh Circuits.

1. *The decision is in conflict with that of the Third Circuit Court of Appeals in N. L. R. B. v. Delaware-New Jersey Ferry Co., 129 Fed. (2d) 130 (1942).*

In *N. L. R. B. v. Delaware-New Jersey Ferry Co.*, 129 Fed. (2d) 130 (3 C.C.A., 1942), the Board made an Order (30 N.L.R.B. 820) by which it required the operator of one of the Delaware River steam ferry lines to recognize one of the national labor unions as the exclusive representative of the masters, mates, engineers and other seamen employed on its boats. The Company refused to comply with this order; and, when the order was brought before the Court for enforcement, the Court refused to enforce it. It observed that public policy requires that marine officers be and remain at least as independent of any entangling obligations to

the seamen whom they command as are any other class of responsible officials:

> "* * * To group officers in command with employees who owe the duty to obey the commands in one bargaining unit seems to us to be dangerous."

—and held that, as the Board's order tended to infringe this public policy, it could not be enforceable:

> "It is true that few, if any, of the licensed officers object to being included in a bargaining unit with the unlicensed personnel. This is not a controlling factor although it is one which we have considered. But the point here is not what the officers want, nor what the men want, nor what the company either wants or is willing to acquiesce in, but rather what is the public interest. The Board's duty to serve the public interest cannot be affected by the desires or acquiescence of the parties. Granting that the determination of the appropriate bargaining unit is primarily a matter for the Board and that courts should be exceedingly careful to refrain from substituting their judgment for that of a duly constituted administrative body, none the less it seems to a majority of the court that in the case at bar the limits of the administrative discretion of the Board have been exceeded, and that the court should not grant an enforcement order based upon the bargaining unit as now constituted."

Under the Board's Order in this case, the licensed masters who command the Steel Company's steamers would be grouped, at least, in the same union with the mates and pilots who owe the duty to obey their commands, and probably also (considering the facts averred in the Petition for Leave to Adduce Additional Evi-

dence) into what is really one bargaining unit with the licensed engineers and the unlicensed seamen who complete the crews of their vessels.

2. *The decision is in conflict with those of the Sixth Circuit Court of Appeals in N. L. R. B. v. Jones & Laughlin Steel Corporation and N. L. R. B. v. Federal Motor Truck Company, 146 Fed. (2d) 718 (1945) and that of the Seventh Circuit Court of Appeals in N. L. R. B. v. E. C. Atkins and Company, ... Fed. (2d) ... (February 27, 1945).*[5]

In the two separate cases of *N. L. R. B. v. Jones & Laughlin Steel Corporation* and the *Federal Motor Truck Company* (146 Fed. (2d) 718, December 8, 1944), the Board held elections among the policemen employed, respectively, by a steel manufacturer and a motor truck manufacturer, and thereafter, by orders similar to those made in this case, required the employers to recognize, as the representatives of these employees, a labor union which had won the elections. It was the same union, in each case, which represented also the productive employees of the two employers; although—as the Board pointed out—the policemen in each case were segregated in a "separate unit" from that to which the productive workers belonged. Upon the Board's petitions for enforcement of its orders, the employers urged in the Circuit Court of Appeals that industrial police had not, traditionally, been subject to union organization; that

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[5]The Opinion in this case, not yet officially reported, appears in Vol. 16, *Labor Relations Reporter* at page 53.

their independence of the influence of productive workers, or productive workers' unions, was a prerequisite to their efficient discharge of their duties as policemen —particularly in time of war; and that the Board had, therefore, exceeded its lawful power and discretion in demanding recognition of the union as exclusive representative of these men. The Court quoted with approval the *Delaware-New Jersey Ferry Company* case, *supra;* described the false position of a plant policeman whose allegiance to his employer must be tempered by the need to maintain his "good standing" with his union; upheld the employers' contentions; and refused to enforce the Board's orders.

In *N. L. R. B. v. E. C. Atkins and Company,* ... Fed. (2d) ... (February 27, 1945), the situation was substantially the same, except that the employer relied principally upon the fact that the plant policemen were members of an Auxiliary Military Police Force, created by Presidential Executive Order at the beginning of the war, and supervised by the War Department. The Court held that, as members of the Auxiliary Military Police Force, the Atkins plant police could not be considered "employees" of the Company within the meaning of the National Labor Relations Act; but, in so holding, it approved expressly the principle on which the police cases of the *Jones & Laughlin Steel Corporation* and *Federal Motor Truck Company* had been decided in the Sixth Circuit: that, in its attempts to effectuate the policies of the National Labor Relations Act, the Board must always avoid any infringement of the purposes of any other federal law, or of any important consideration of public policy.

In all three of these police cases, it was urged in the Circuit Courts by the Board that it had frequently required the inclusion of plant policemen in "appropriate units," thus establishing a "pattern" of collective bargaining which, although not in keeping with any age-seasoned tradition, had nevertheless, as the Board asserted out of its expert knowledge, proved satisfactory and so won the Board's approval as a means of effectuating the policies of the National Labor Relations Act. The same argument was, in essence, made and relied upon by the Board, when this case was before the Circuit Court. In the same way, the Board urged in the police cases that, by subjecting industrial police to union organization, it had in no way impaired their capacity to discharge their legal duties to the general public and to their employers. That argument, too, is relied upon by the Board in this present case. But both of these arguments were rejected by the Circuit Courts which decided the police cases. Both Courts held that an employee whose legal duties require that he protect the interests of his employer and of the general public, even when those interests oppose those of other, subordinate employees, cannot lawfully be given a status, by order of the respondent Board, which involves him in the obligations of a brother union member to those subordinate employees. This principle applies as well or better to the licensed master of a steam vessel, as it does to an industrial policeman; and it follows that the decision in this case by the Court below is directly in conflict with the principle of the decisions of the police cases in the other two Circuits.[6]

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[6]The Board has, within a few days before this is written, filed its petition for writs of certiorari, in these

III. The Decision of This Case by the Circuit Court of Appeals Is Legally Unsound.

1. *The true rule, which should have governed the Board in this case, is that declared in the police cases.*

In the three police cases just considered, the Courts held that the Board cannot, in the exercise of its powers to establish "appropriate units," lawfully give jurisdiction over supervisory employees—such as industrial policemen or licensed shipmasters—to a labor union, if membership in that union will create obligations to subordinate employees which are likely to hamper the effectiveness of management or to embarrass the supervisory employee in the discharge of his duties to his employer and to the public.

It is submitted that this is the true rule, which should govern the Board in its decisions in all such cases as this.

It is this rule which would forbid a Board order giving to the union which represents the productive employees of a steel company, jurisdiction, against the Company's will, of its employment bargain with its president and executive officers. A bargaining "unit" so constituted would not be "appropriate" because it would, instead of effectuating the true policies of the Act, either defeat any possibility of efficient management of the

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three police cases, at docket numbers 1236, 1237 and 1238 of this term of this Court. Its principal ground for asking reviews here, is that the three cases present a question of general importance, which this Court should settle.

Company, or else nullify the effectiveness of the union as a representative of labor, or, finally,—if the practice became general—result in a revolution of industrial relations which Congress can never have contemplated when it passed this Act in 1935.

But the same rule which requires that corporate executives be excluded, ordinarily, from "appropriate units" of subordinate employees, applies as well to require the exclusion of the licensed master of any large steam vessel from a unit made up of his subordinates. In law and in fact, he is the sole effective representative of management aboard his ship, just as the corporate president is, ultimately, the effective representative of management in his corporation. If management is to be deprived of the independent judgment or the undivided loyalty of either officer, the results will be, not those contemplated by the Act or those necessary to effectuate its true policies, but instead an economic and industrial change of a nature which the Act did not intend.

That is enough to settle this case; for the powers and duties of the Board are limited by the true intent of the Act. This Court has treated the Act as a remedial statute,[7] and has given the Board all possible latitude in its plans to effectuate the policies of the Act. But, when the Board has misunderstood those policies, or misconstrued its own duty or over-estimated its own powers under the Act, the Court has not hesitated to overrule and reverse its decisions. Thus, in *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31; 86 L. Ed. 1246 (1942), the Board determined that, to encourage collec-

[7] *Republic Steel Corp. v. N. L. R. B.*, 311 U. S. 7; 85 L. Ed. 6 (1940).

tive bargaining—in accordance with the policies of the Act—it was necessary to require a shipowner to reinstate certain seamen who had been discharged, for mutinous conduct intended to support their labor union. This Court held that the Board's order must be set aside, saying:

> "* * * the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task."

In that case, the need for effectuating the policies of the National Labor Relations Act was overbalanced by the greater need of preserving order and discipline in the merchant marine. The same rule applies where the policies of this Act, if carried too far, will tend to infringe any other consideration of public policy. Thus, in *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177; 85 L. Ed. 1271 (1941), the Board ordered a mining company to reinstate certain employees who had been wrongfully discharged, with full back-pay, and without credit for amounts of earnings deliberately lost, by certain of the employees, as a result of their wilful refusal to take other, available employment. The Board held, in effect, that to discourage unlawful discharges and so to effectuate the policies of the Act, it was desirable and proper to permit any employee wrongfully discharged to await his reinstatement in idleness, and so to collect full, back wages. The Board's argument had much to commend it

in logic, at least if the National Labor Relations Act were considered to express the entire body of the law; but this Court held that the policies of the Act cannot be held to encourage idleness: that it cannot be supposed in the absence of words which say so, that Congress intended, by this Act, to overturn the long established public policy which encourages industry. Therefore, the Court set the Board's order aside, saying:

> "* * * the advantages of a simple rule must be balanced against the importance of taking fair account, in a civilized legal system, of every socially desirable factor in the final judgment. * * *
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> "* * * By leaving such an adjustment to the administrative process we have in mind not so much the minimization of damages as the healthy policy of promoting production and employment."

The essential principle of this decision has its bearing here. Under the common law, and under the federal statutes, the licensed master of every steam vessel occupies a peculiar legal status. The law gives him the broadest powers to control and discipline the officers and seamen who are under his command; and, at the same time, it burdens him with a multitude of legal duties to his employer, to his subordinates, and to the public at large. The maritime law on the subject reflects of course a public policy, born of experience which has taught Congress and the Courts of Admiralty that, to discharge the duties commonly incident to his work, such an officer must have commensurate powers, and a commensurate independence of the good- or ill-will of those whom he commands. If Congress had intended to modify this policy, expressed in this great body of traditions and laws of the sea, when it passed the National Labor Relations Act in 1935, the purpose would have been expressed

with words of much greater definiteness and clarity than any which can be found in the Act.

Or, to look at the same matter from another direction, this Act was intended to accomplish only the purposes recited in its preambles: to augment the power of labor and its unions to bargain fairly with management—not to enable them to defeat or destroy management; to improve employment and wages—not to justify social experimentation with the unrelated, normal controls of the industries which must provide both; and to promote interstate commerce by encouraging the prosperity of working people and discouraging strikes—but not to hamper or discourage the efficient direction, by their owners, of the facilities of commerce. In short, as both this Court[8] and the Board[9] have declared, the Act intended no interference with the security and freedom of management beyond that required to assure the security of labor, and the independence of labor unions. And since control of the shipmasters in this case is a legitimate necessity to free and efficient management, but of no legitimate importance to the freedom or security of the unions, it must follow that the Board has misconstrued the Act.

Respectfully submitted,

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[8]See *N. L. R. B. v. Jones & Laughlin Steel Corporation,* 301 U. S. 1, 45; 81 L. Ed. 893, 916 (1937).

[9]See *"Third Annual Report of the National Labor Relations Board,"* page 65.